

CHAPTER 69-09-09 WIND TURBINE DECOMMISSIONING

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69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-02. Decommissioning responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuing period of twenty-four months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after the time the facility or turbine reaches the end of its useful life, as determined in section 69-09-09-03. Decommissioning must be completed within eighteen months after the facility or turbine reaches the end of its useful life.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground cables to a depth of twenty-four [60.96 centimeters] inches; removal of foundations, buildings, and ancillary equipment to a depth of three feet [91.44 centimeters] and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, topsoiled, and reseeded according to natural resource conservation service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance. After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission by order may require the owner or operator to secure a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service "BBB" or higher as issued by Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27